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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
800 Data Base Access Tariffs) CC Docket No. 93-129
and the)
800 Service Management System Tariff)

Rebuttal of Atlantic Telephone Membership Corporation, Coastal Utilities, Inc., Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Inc., Horry Telephone Cooperative, Inc., Millington Telephone Company, Inc., Mt. Horeb Telephone Company, Pineland Telephone Cooperative, Inc., Southeast Telephone Company of Wisconsin, Inc. and Warwick Valley Telephone Company

Atlantic Telephone Membership Corporation, Coastal Utilities, Inc., Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Inc., Horry Telephone Cooperative, Inc., Millington Telephone Company, Inc., Mt. Horeb Telephone Company, Pineland Telephone Cooperative, Inc., Southeast Telephone Company of Wisconsin, Inc., and Warwick Valley Telephone Company (the "Independents"), by their attorneys and cost consultant John Staurulakis, Inc.,¹ hereby file this consolidated rebuttal to the MCI Telecommunications Corporation's (MCI's)² comments on the September 20, 1993 Independent Direct Case. MCI's comments do not contain any specific allegation that would warrant continuation of the Commission's investigation into the 800 data base service

¹ John Staurulakis, Inc. (JSI) is a cost consulting firm specializing in cost separations services for independent telephone companies. JSI assists its client-companies in the preparation and filing of federal access tariffs with the Federal Communications Commission (Commission). Each of the Independents utilized these services with regard to their respective 800 data base tariff filing at issue.

² See In the Matter of: 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Comments [of MCI Telecommunications Corporation], CC Docket 93-129, filed April 15, 1994 (MCI Comments).

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tariffs filed by the Independents.³ Accordingly, the Commission should terminate its investigation with regard to the Independents,⁴ finding that their respective 800 data base service tariffs and rates are just and reasonable in accordance with the Communications Act of 1934, as amended (Communications Act), and the applicable Commission decisions, Rules, and Regulations. In support thereof, the following is shown:

I. MCI has Failed to Demonstrate that the 800 Data Base Service Rates Proposed by the Independents are Unjust and Unreasonable

MCI makes no specific claims pertaining to the rates that the Independent's proposed for their respective provision of 800 data base service, but only generally avers that "[t]he direct cases, in general, appear designed to obfuscate the LECs' costs and ratemaking methods, rather than to justify their rates."⁵ Further, MCI makes the erroneous statement that all rate of return carriers which have based their rates on other carriers' rates, including

³ See Direct Case of Atlantic Telephone Membership Corporation, et al., CC Docket No. 93-129, filed September 20, 1993 (Independents Direct Case) at 2 n.4 (listing of specific tariff filings of the Independents). As used herein, the term "800 data base service" refers to the service elements -- query charges and vertical features -- that the Independents have filed in their respective tariffs.

⁴ The Independents filed their respective 800 data base service tariffs on March 5, 1993 in response to the Commission's directives contained in the January 29, 1993 decision concerning the filing of such tariffs. See In the Matter of Provision of Access for 800 Service, Second Report and Order, CC Docket No. 86-10, FCC 93-53, released January 29, 1993 (Second Report and Order); see also In the Matter of Provision of Access for 800 Service, Memorandum Opinion and Order, CC Docket No. 86-10, DA 93-202, released February 22, 1993 at para. 2.

⁵ MCI Comments at 2.

the Independents, "should be required to provide refunds or reduce rates for the prior period as well as lower their rates prospectively."⁶

First, in response to MCI's general objection, the Independents explicitly justified their rates. The Independents clearly stated in their direct case that each of their tariff filings were made pursuant to Section 61.39 of the Commission's Rules.⁷ In addition, the Independents articulated in their direct case not only the Section 61.39 standards for new service rate setting that the Commission has found to be in the public interest,⁸ but also noted that the Commission recognized permitting LECs, such as the Independents, "'to use an average or surrogate method or rule that relied on NECA data would probably be economically more efficient than requiring detailed studies and would still produce reasonable results.'"⁹ These Commission

⁶ Id. at 4.

⁷ See Independents Direct Case at 8; see also 47 C.F.R. Section 61.39. As Section 61.39 Local Exchange Carriers (LECs), the Independents concur in the terms and conditions, including those for 800 data base service, that are filed in the National Exchange Carrier Association, Inc. (NECA) Tariff F.C.C. No. 5 (NECA Tariff).

⁸ See Independents Direct Case at 8 citing In the Matter of Regulation of Small Telephone Companies, Report and Order, CC Docket No. 86-467, 2 FCC Rcd 3811 (1987) (Small Company Order) at para. 27 (footnote omitted) (new service filings will "be considered prima facie lawful for the initial rate period"; "[t]hese rates are likely to be of minor effect during that period and more burdensome rules could delay the introduction of the service"; and "[f]lexible treatment of such rates is warranted.")

⁹ See id. at 8-9 citing Second Report and Order, supra n. 4, at para. 37 (emphasis added).

precedents referenced by the Independents clearly establish the reasonableness of the rates that were proposed by the Independents, i.e., the rates proposed by NECA.¹⁰ MCI did not address nor make arguments against the Independents' utilization of this Commission decision in support of their demonstration of the reasonableness of their respective 800 data base service tariffs. In fact, MCI's general assertions are inappropriate to the Independents and should be dismissed.

MCI's arguments regarding retroactive rate adjustments also are equally irrelevant to the Independents' 800 data base service tariffs. Surely, MCI is aware of the Commission's prior rulings, cited by the Independents in their direct case, that new service rates will be "adjusted automatically" when historical costs and demand are available,¹¹ and the continuing validity of these rulings as demonstrated by the Commission's denial of similar challenges to the 1993 annual access charge filings of Section 61.39 LECs.¹² MCI has chosen to make bald allegations that are contrary to these very rulings; such disregard for established precedents should not be countenanced.

In summary, MCI's assertions are baseless and should be rejected. The rates proposed by the Independents in their

¹⁰ See also id.

¹¹ See Small Company Order, supra n.8, at para. 27.

¹² See Independents Direct Case at 9-10 citing In the Matter of 1993 Annual Access Tariff Filings, et al., Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation, CC Docket Nos. 93-193, 93-123, and 93-129, DA 93-762, released June 23, 1993 at paras. 72-74.

individual 800 data base service tariffs are consistent with the Commission's established policies and decisions, and should be found to be just and reasonable.¹³ Accordingly, further inquiry into the Independents' 800 data base service rates is not warranted.

II. Substantive Evidence Presented by the Independents Alleviates Concerns Regarding "Double Billing" of 800 Data Base Queries

MCI asserts a general allegation regarding "double billing" of 800 data base queries against those LECs that have not as yet deployed Signalling System No. 7 technology (SS7).¹⁴ MCI's concerns, however, have been effectively addressed by the substantive evidence presented by the Independents in their direct case.

Contrary to MCI's allegations, the Independents demonstrated that: (1) meet point billing principles associated with jointly provided access service are equally applicable in the SS7 environment;¹⁵ (2) the Commission has unequivocally decided that

¹³ The Independents also note MCI's averment that the Independents did not respond to questions regarding "unbillable queries." See MCI Comments at 46 n.136, 47. The rates that the Independents proposed are consistent with the underlying decisions and policies embodied in both the Small Company Order and Section 61.39 of the Commission's Rules, as well as the Second Report and Order. As shown above, the rate setting technique utilized by the Independents is presumptively lawful and the rates will "automatically" adjust, even assuming MCI's concerns regarding "unbillable queries" are reasonable.

¹⁴ MCI Comments at 48 citing Independents Direct Case at 6 ("[t]he Independents simply remarked that meet point billing principles would alleviate any concerns regarding the risk of double billing").

¹⁵ See Independents Direct Case at 5-6.

LECs, such as the Independents, should have a variety of options with regard to the provision of 800 data base services;¹⁶ and (3) "no Independent is authorized to bill an 800 data base charge unless it has first updated NECA Tariff F.C.C. No. 4"¹⁷ identifying which LEC will bill for the query at issue.

Apparently, the MCI Comments ignored the positions and evidence discussed above. The facts before the Commission clearly demonstrate that MCI's concerns regarding "double billing" have been addressed. Accordingly, MCI's unsupported and unresponsive allegations to the contrary should be dismissed.

III. MCI's Remaining Arguments have been Addressed

MCI makes several claims regarding the terms and conditions contained in the tariffs that were filed.¹⁸ Except as noted in the Independents Direct Case,¹⁹ the Independents concur in the terms and conditions for the provision of 800 data base service as filed by NECA. The only specific allegations made by MCI regarding the Independents' terms and conditions, which are those filed in the NECA Tariff, were related to Area of Service (AOS) routing.²⁰

¹⁶ See id. at 6 n.13 citing In the Matter of Provision of Access for 800 Service, Report and Order, CC Docket No. 86-10, 4 FCC Rcd 2824, 2829, n. 90 (1989).

¹⁷ Id. at 7 citing NECA Tariff F.C.C. No. 5, Section 5.2.1.E, 1st Revised Page 5-9.1.

¹⁸ See MCI Comments at 49-61.

¹⁹ See Independents Direct Case at 2 n.4, 3 n.7.

²⁰ See MCI Comments at 55 n.171. MCI also references NECA's explanations of call attempts and billing scenarios. See id. at 59 n.182. However, MCI presents no argument that it disagrees with NECA's explanations or that they are, in any way, inadequate.

MCI states that, although the NECA Tariff offers Local Access Transport Area (LATA) routing, there "is little benefit to AOS routing on the LATA level unless multiple carrier termination is part of the service."²¹ Apparently, MCI views the NECA Tariff as ambiguous because MCI states that the affected LECs should "better articulate" whether AOS routing is a basic or vertical feature.²²

The Independents' respective 800 data base service tariffs, the record, and the Commission's prior orders, however, leave nothing unclear with regard to AOS routing. The Commission already has articulated what it considers to be the "basic" AOS routing query function -- "the routing of 800 calls by Local Exchange Carriers ... to different interexchange carriers ... based on the local access transport area (LATA) in which traffic originates...."²³ This definition governs the tariff and no further inquiry is necessary.

Moreover, it would appear that MCI already has answered its own request. MCI specifically states that it had clarified its request to the Commission's Common Carrier Bureau regarding AOS routing, and "seeks geographic aggregations 'down to the LATA level, i.e., routing by state of origination, by originating NPA,

²¹ Id. at 55.

²² Id.

²³ In the Matter of Provision of Access for 800 Service, Order, CC Docket No. 86-10, 8 FCC Rcd 1423 (1993) at para. 1; see also In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation, CC Docket No. 93-129, DA 93-930, released July 19, 1993 at para. 1 n.1.

by originating NPA-NXX, or by LATA....' "²⁴ MCI has clearly overlooked the fact that the Independents' respective 800 data base service tariffs already provide the terms and conditions offering the AOS routing service it seeks. As cited above, MCI has acknowledged that its desire for AOS routing could be met in a variety of alternative forms including AOS routing by LATA -- which is offered by the NECA Tariff. Accordingly, MCI's position appears to have been addressed and its arguments should be dismissed with respect to each of the Independent's 800 data base service tariffs.

IV. Conclusion

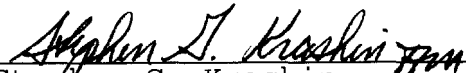
MCI has not presented any new argument nor evidence that would warrant further suspension and investigation of the Independents' respective 800 data base service tariffs. The Independents' respective rates, terms and conditions for the provision of 800 data base service are just and reasonable under the Communications Act, the Commission's policies, and applicable Commission decisions and Rules. Accordingly, the Independents again request that the


²⁴ MCI Comments at 51 citing MCI April 1, 1993 Ex Parte Letter at 2 (emphasis added).

Commission terminate this investigation in its entirety with respect to the Independents' 800 data base service tariffs.

Respectfully submitted,

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Coastal Utilities, Inc.
Farmers Telephone Cooperative, Inc.
Hargray Telephone Company, Inc.
Horry Telephone Cooperative, Inc.
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Mt. Horeb Telephone Company
Pineland Telephone Cooperative, Inc.
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Certificate of Service

I, Thomas J. Moorman, do hereby certify that on this 5th day of May, 1994, a copy of the foregoing "Rebuttal of Atlantic Telephone Membership Corporation, et al.," was mailed first class, postage prepaid to the individuals listed below.

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